

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:11-CR-00058-BR

UNITED STATES OF AMERICA

V.

HILARIA RODRIGUEZ

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ORDER

This matter is before the court on defendant's *pro se* motion to reduce her sentence.

On 31 May 2011, defendant pled guilty to conspiracy to distribute and possession with the intent to distribute 280 grams or more of cocaine base (crack), five kilograms or more of cocaine, and a quantity of marijuana in violation of 21 U.S.C. § 846 and distribution of 500 grams or more of cocaine in violation of 21 U.S.C. § 841(a)(1). On 2 June 2011, a jury convicted her of possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). On 8 December 2011, the court sentenced defendant to 151 months imprisonment on the drug offenses, with those terms running concurrently, and 60 months imprisonment on the firearm offense, to run consecutively to the other terms of imprisonment, for a total term of imprisonment of 211 months. Defendant appealed her convictions and sentence. The Fourth Circuit Court of Appeals affirmed. (DE # 88.)

In the instant motion, defendant contends that her sentence should be reduced pursuant to the Supreme Court’s decision in Dorsey v. United States, 132 S. Ct. 2321 (2012). In that case, the Court held “that Congress intended the Fair Sentencing Act’s new, lower mandatory minimums to apply to the post-Act sentencing of pre-Act offenders.” Dorsey, 132 S. Ct. at 2335.

The Fair Sentencing Act became effective 3 August 2010. *Id.* at 2329. Guidelines promulgated pursuant to the Act became permanent on 1 November 2011. *Id.*

Defendant was sentenced after the enactment of *and* in accordance with the Fair Sentencing Act and the guidelines promulgated pursuant to it. Because of the drug quantities involved, defendant was subject to the Fair Sentencing Act's mandatory minimum of 10 years imprisonment for the conspiracy offense, see 21 U.S.C. § 841(b)(1)(A), and five years imprisonment for the distribution offense, see id. § 841(b)(1)(B). (See also PSR ¶¶ 45, 47, DE # 62.) Defendant's guideline range of imprisonment on these drug offenses, 151-188 months, (12/8/11 Tr., DE # 80, at 78), was above those statutory mandatory minimum terms of imprisonment. That guideline range was determined by reference to the sentencing guidelines effective 1 November 2011. (See PSR, DE # 62, at 9.) Therefore, defendant's sentence was in accord with Dorsey.

Defendant's motion is DENIED.

This 13 November 2012.



W. Earl Britt
Senior U.S. District Judge